

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

WILLIAM HEATHCOTE, individually and on behalf of all others similarly situated (ALMA SUE CROFT),

**Plaintiff,**

V.

SPINX GAMES LIMITED, GRANDE GAMES  
LIMITED, and BEIJING BOLE  
TECHNOLOGY CO., LTD.,

### Defendants.

NO. 2:20-cv-01310-RSM

**STIPULATED MOTION AND ORDER  
REGARDING ENTRY OF MODEL  
PROTECTIVE ORDER**

**NOTE ON MOTION CALENDAR:  
MARCH 22, 2022**

## **1. PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

## 2. "CONFIDENTIAL" MATERIAL

“Confidential” material is limited to the following documents and tangible things produced or otherwise exchanged: (1) non-public contractual terms with customers, vendors, advertising

1 platforms, and other parties; (2) pricing, financial, and/or profit information; (3) non-public  
 2 information regarding suppliers and supplier lists; (4) protected information regarding customers,  
 3 customer lists, customer usage, customer payments, and customer technical requirements; (5) non-  
 4 public, competitively sensitive, and proprietary product development information and information  
 5 relating to new products; (6) non-public development processes, designs, drawings, engineering,  
 6 and hardware and software configuration information; (7) non-public and competitively sensitive  
 7 marketing plans, business plans, forecasts, and business strategies; (8) non-public advertising data,  
 8 which in the hands of competitors would be valuable; (9) private customer feedback regarding  
 9 products that have not been publicly disclosed; (10) protected personal identifying information  
 10 (including contact information) and other information subject to privacy laws; and (11)  
 11 competitively sensitive internal financial reporting and business diligence materials.

12     3.     SCOPE

13       The protections conferred by this agreement cover not only confidential material (as  
 14 defined above), but also (1) any information copied or extracted from confidential material; (2) all  
 15 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
 16 conversations, or presentations by parties or their counsel that might reveal confidential material.

17       However, the protections conferred by this agreement do not cover information that is in  
 18 the public domain or becomes part of the public domain through trial or otherwise.

19     4.     ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

20       4.1     Basic Principles. A receiving party may use confidential material that is disclosed  
 21 or produced by another party or by a non-party in connection with this case only for prosecuting,  
 22 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the  
 23 categories of persons and under the conditions described in this agreement. Confidential material  
 24 must be stored and maintained by a receiving party at a location and in a secure manner that ensures  
 25 that access is limited to the persons authorized under this agreement.

1           4.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
2 by the court or permitted in writing by the designating party, a receiving party may disclose any  
3 confidential material only to:

4               (a)     the receiving party’s counsel of record in this action, as well as employees  
5 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

6               (b)     the officers, directors, and employees (including in house counsel) of the  
7 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
8 agree that a particular document or material produced is for Attorney’s Eyes Only and is so  
9 designated;

10              (c)     experts and consultants to whom disclosure is reasonably necessary for this  
11 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12              (d)     the court, court personnel, and court reporters and their staff;

13              (e)     copy or imaging services retained by counsel to assist in the duplication of  
14 confidential material, provided that counsel for the party retaining the copy or imaging service  
15 instructs the service not to disclose any confidential material to third parties and to immediately  
16 return all originals and copies of any confidential material;

17              (f)     during their depositions, witnesses in the action to whom disclosure is  
18 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
19 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
20 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
21 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
22 under this agreement;

23              (g)     the author or recipient of a document containing the information or a  
24 custodian or other person who otherwise possessed or knew the information.

25           4.3     Filing Confidential Material. Before filing confidential material or discussing or  
26 referencing such material in court filings, the filing party shall confer with the designating party,

1 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will  
 2 remove the confidential designation, whether the document can be redacted, or whether a motion  
 3 to seal or stipulation and proposed order is warranted. During the meet and confer process, the  
 4 designating party must identify the basis for sealing the specific confidential information at issue,  
 5 and the filing party shall include this basis in its motion to seal, along with any objection to sealing  
 6 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and  
 7 the standards that will be applied when a party seeks permission from the court to file material  
 8 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the  
 9 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.  
 10 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with  
 11 the strong presumption of public access to the Court's files.

12 5. **DESIGNATING PROTECTED MATERIAL**

13 5.1 **Exercise of Restraint and Care in Designating Material for Protection.** Each party  
 14 or non-party that designates information or items for protection under this agreement must take  
 15 care to limit any such designation to specific material that qualifies under the appropriate  
 16 standards. The designating party must designate for protection only those parts of material,  
 17 documents, items, or oral or written communications that qualify, so that other portions of the  
 18 material, documents, items, or communications for which protection is not warranted are not swept  
 19 unjustifiably within the ambit of this agreement.

20 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
 21 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
 22 unnecessarily encumber or delay the case development process or to impose unnecessary expenses  
 23 and burdens on other parties) expose the designating party to sanctions.

24 If it comes to a designating party's attention that information or items that it designated for  
 25 protection do not qualify for protection, the designating party must promptly notify all other parties  
 26 that it is withdrawing the mistaken designation.

1       5.2     Manner and Timing of Designations. Except as otherwise provided in this  
 2 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
 3 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
 4 be clearly so designated before or when the material is disclosed or produced.

5               (a)     Information in documentary form: (*e.g.*, paper or electronic documents and  
 6 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
 7 the designating party must affix the word “CONFIDENTIAL” to each page that contains  
 8 confidential material. If only a portion or portions of the material on a page qualifies for protection,  
 9 the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate  
 10 markings in the margins).

11               (b)     Testimony given in deposition or in other pretrial proceedings: the parties  
 12 and any participating non-parties must identify on the record, during the deposition or other pretrial  
 13 proceeding, all protected testimony, without prejudice to their right to so designate other testimony  
 14 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the  
 15 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or  
 16 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information  
 17 at trial, the issue should be addressed during the pre-trial conference.

18               (c)     Other tangible items: the producing party must affix in a prominent place  
 19 on the exterior of the container or containers in which the information or item is stored the word  
 20 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,  
 21 the producing party, to the extent practicable, shall identify the protected portion(s).

22       5.3     Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
 23 designate qualified information or items does not, standing alone, waive the designating party’s  
 24 right to secure protection under this agreement for such material. Upon timely correction of a  
 25 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
 26 in accordance with the provisions of this agreement.

1       6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2       6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
 3 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
 4 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
 5 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
 6 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
 7 original designation is disclosed.

8       6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
 9 regarding confidential designations without court involvement. Any motion regarding confidential  
 10 designations or for a protective order must include a certification, in the motion or in a declaration  
 11 or affidavit, that the movant has engaged in a good faith meet and confer conference with other  
 12 affected parties in an effort to resolve the dispute without court action. The certification must list  
 13 the date, manner, and participants to the conference. A good faith effort to confer requires a face-  
 14 to-face meeting or a telephone conference.

15       6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
 16 intervention, the designating party may file and serve a motion to retain confidentiality under Local  
 17 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
 18 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
 19 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on  
 20 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain  
 21 the material in question as confidential until the court rules on the challenge.

22       7. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**  
 23 **LITIGATION**

24       If a party is served with a subpoena or a court order issued in other litigation that compels  
 25 disclosure of any information or items designated in this action as "CONFIDENTIAL," that party  
 26 must:

1                             (a)     promptly notify the designating party in writing and include a copy of the  
2 subpoena or court order;

3                             (b)     promptly notify in writing the party who caused the subpoena or order to  
4 issue in the other litigation that some or all of the material covered by the subpoena or order is  
5 subject to this agreement. Such notification shall include a copy of this agreement; and

6                             (c)     cooperate with respect to all reasonable procedures sought to be pursued by  
7 the designating party whose confidential material may be affected.

8        8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

9                             If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
10 material to any person or in any circumstance not authorized under this agreement, the receiving  
11 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,  
12 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the  
13 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,  
14 and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be  
15 Bound" that is attached hereto as Exhibit A.

16        9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
17 MATERIAL

18                             When a producing party gives notice to receiving parties that certain inadvertently  
19 produced material is subject to a claim of privilege or other protection, the obligations of the  
20 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
21 is not intended to modify whatever procedure may be established in an e-discovery order or  
22 agreement that provides for production without prior privilege review. The parties agree to the  
23 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

1       10. NON TERMINATION AND RETURN OF DOCUMENTS

2           Within 60 days after the termination of this action, including all appeals, each receiving  
3 party must return all confidential material to the producing party, including all copies, extracts and  
4 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

5           Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
6 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
7 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work  
8 product, even if such materials contain confidential material.

9           The confidentiality obligations imposed by this agreement shall remain in effect until a  
10 designating party agrees otherwise in writing or a court orders otherwise.

11           IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

12           DATED this 22nd day of March, 2022.

13           BURSOR & FISHER, P.A.

14           BYRNES KELLER CROMWELL LLP

15           By /s/ Alec M. Leslie  
16           Alec M. Leslie (*pro hac vice*)  
17           888 Seventh Avenue  
18           New York, NY 10019  
19           Telephone: (646) 837-7150  
20           aleslie@bursor.com

21           By /s/ John A. Tondini  
22           John A. Tondini, WSBA #19092  
23           1000 Second Avenue, 38th Floor  
24           Seattle, WA 98104  
25           Telephone: (206) 622-2000  
26           jtondini@byrneskeller.com

27           CARSON NOEL PLLC  
28           Wright A. Noel, WSBA #25264  
29           20 Sixth Avenue NE  
30           Issaquah, WA 98027  
31           Telephone: (425) 837-4717  
32           wright@carsonnoel.com  
33           **Attorneys for Plaintiff**

34           KEKER, VAN NEST & PETERS LLP

35           By /s/ Michelle Ybarra  
36           Michelle Ybarra (*pro hac vice*)  
37           633 Battery Street  
38           San Francisco, CA 94111-1809  
39           Telephone: (415) 391-5400  
40           mybarra@keker.com  
41           **Attorneys for Defendants**

## **ORDER**

PURSUANT TO STIPULATION, IT IS SO ORDERED.

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED this 23<sup>rd</sup> day of March, 2022.



**RICARDO S. MARTINEZ**  
**CHIEF UNITED STATES DISTRICT JUDGE**

EXHIBIT A

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty of  
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
6 issued by the United States District Court for the Western District of Washington on  
7 \_\_\_\_\_ [date] in the case of *Heathcote (Croft) v. SpinX Games, et al.*, Case No. 2:20-  
8 cv-01310-RSM. I agree to comply with and to be bound by all the terms of this Stipulated  
9 Protective Order and I understand and acknowledge that failure to so comply could expose me to  
10 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in  
11 any manner any information or item that is subject to this Stipulated Protective Order to any person  
12 or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

16 Date: \_\_\_\_\_

17 | City and State where sworn and signed:

18 Printed name:

19 || Signature:

**CERTIFICATE OF SERVICE**

The undersigned attorney certifies that on the 22nd day of March, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel on record in the matter.

/s/ John A. Tondini  
Byrnes Keller Cromwell LLP  
1000 Second Avenue, 38th Floor  
Seattle, WA 98104  
Telephone: (206) 622-2000  
Facsimile: (206) 622-2522  
[jtondini@byrneskeller.com](mailto:jtondini@byrneskeller.com)